

Remarks

Claims 1-76 are pending in the instant application. Claim 66 has been amended to correct an inadvertent typographical error. No new matter has been introduced.

Provisional Election With Traverse

The Examiner has required an election under 35 U.S.C. § 121 of one of three groups cast by the Examiner. The Examiner contends that the groups are distinct, each from each other.

In order to be fully responsive, Applicants hereby provisionally elect, *with traverse*, the invention of Group I, drawn to an isolated nucleic acid, a recombinant vector, a recombinant host cell and a method for producing a polypeptide, represented by pending claims 1-10, 12-20, 22-31, 33-47, 49-57, 59-68, and 70-74.

With respect to the Examiner's division of the invention into three groups and the reasons stated therefore, Applicants respectfully traverse.

37 C.F.R. § 1.141(b) states, "Where claims to all three categories, product, process of making and process of use, are included in a national application, a three way requirement for restriction can only be made where the process of making is distinct from the product." The Examiner alleges that the recombinant vector of Group I can be alternatively made by chemical synthesis. While Applicants agree that this is not impossible, Applicants submit that those skilled in the art would be highly unlikely to chemically synthesize a recombinant vector comprising the nucleic acid sequence of the present invention and a vector. Consequently, Applicants maintain that the product claims (Group I) and the process of making claims (Group II) should be examined together.

In view of the above, Applicants respectfully request that the Examiner reconsider and withdraw the restriction requirement and examine the subject matter of Groups I-III together in the present application.

Further, although not acquiescing to the restriction requirement, Applicants nevertheless note that the Examiner has acknowledged that the claims of Group I and the claims of Groups II and III are related as between a product and processes for making or using the product. Paper No. 4, page 2. Pursuant to the procedures set forth in the Official Gazette notice dated March 26, 1996 (1184 O.G. 86), if an elected product claim is found allowable, "withdrawn process claims which depend from or otherwise include all of the limitations of the allowable product claim will be rejoined." M.P.E.P. § 821.04. Accordingly, should the Restriction Requirement

be made final, Applicants respectfully request that if any of the claims of Group I, *i.e.*, claims 1-10, 12-20, 22-31, 33-47, 49-57, 59-68, and 70-74, are found allowable, then the process claims of Groups II and III be rejoined and examined for patentability.

Applicants retain the right to petition from the restriction requirement under 37 C.F.R. § 1.144.

Conclusion

Applicants respectfully request that the above-made amendments and remarks be entered and made of record in the file history of the instant application. If there are any fees due in connection with the filing of this paper, please charge the fees to our Deposit Account No. 08-3425. If a fee is required for an extension of time under 37 C.F.R. § 1.136 that is not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

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